

EXHIBIT “K”

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION
4 CASE NO. 3:16-CV-00875-GCM

5 -----x
6 HILDA BATES, as Administer of the
7 Estate of Neman T. Bates,

8 Plaintiff,

9 - vs -

10 TIPPMANN SPORTS, LLC, and
11 DICK'S SPORTING GOODS, INC.,
12 and GAYSTON CORPORATION,

13 Defendants.

14 and

15 GAYSTON CORPORATION,

16 Third-Party Plaintiff,

17 vs.

18 BXD ENTERPRISES, INC.,

19 Third-Party Defendant.
20 -----x

21 VIDEOTAPED DEPOSITION of HARRI KYTOMAA,
22 taken by the Defendants, at the offices of Robinson
23 Bradshaw & Hinson, P.A., 101 North Tryon Street,
24 Suite 1900, Charlotte, North Carolina 28246, on
25 Tuesday, June 19, 2018, commencing at 10:13 a.m.,
 before Velicia Marseille, a Shorthand (Stenotype)
 Reporter and Notary Public within and for the
 State of North Carolina.



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1 Q. With respect to the 12-ounce bottle, am I
2 correct in understanding that your opinion is
3 that it was last filled by either Mr. Bates or
4 Dick's Sporting Goods on January 6, correct?

5 A. That's right.

6 Q. Do you think that it is likely if Dick Sporting
7 Goods filled those bottles, the 9-ounce can and
8 the 12-ounce can on January 6 that they would
9 both burst or rupture within 24 hours of each
10 other or four weeks later, or is it more likely
11 that Mr. Bates filled them the night before and
12 they burst within 24 hours of him filling them?

13 A. I don't know.

14 Q. Why don't you know?

15 A. I think there's too many variables to be able
16 to answer that question.

17 Q. Have you undertaken to try to find that answer
18 out?

19 A. I have not.

20 Q. Regardless of who last filled it, do you agree
21 or is it your opinion, to a reasonable degree of
22 engineering certainty, that whoever filled it
23 last overfilled it?

24 A. When you say "it" what do you mean?

25 Q. The 9-ounce canister.



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1 A. Yes. I believe that the 9-ounce canister was
2 overfilled.

3 Q. Do you agree or is it your opinion, to a
4 reasonable degree of engineering certainty,
5 that the 12-ounce canister was overfilled?

6 A. It certainly reached a pressure that caused the
7 disk to burst. As to whether it was overfilled,
8 a cylinder of this type will fail, that is the
9 PRD, if operating correctly, will actuate.

10 Let me answer it this way: So if the
11 temperature is normal room temperature for the
12 PRD to actuate around 2700, I would say that
13 yes, it would need to be overfilled also.

14 Q. Are you aware of any, I'll call them,
15 environmental conditions, meaning the
16 temperature in Mr. Bates' house, the night of
17 February 1 or throughout the day on February 2
18 that was unusual outside of a normal range for
19 a house?

20 A. I don't have any information one way or the
21 other on that.

22 Q. Are you aware of any reason why the 12-ounce
23 bottle would have burst in the middle of the
24 night if it had been filled four weeks earlier?
25 Why it would have burst in that moment in time?



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1 by accident and while trying to do what the
2 filler thinks is the right thing.

3 Q. Have you reached an opinion as to whether if
4 Mr. Bates is the one that overfilled the
5 canister if he did it intentionally?

6 A. You're asking me hypothetical. I've already
7 given you my opinions, and I have not tried to
8 answer that question before. I guess I don't
9 have an opinion on that.

10 Q. Is it your opinion, to a reasonable degree of
11 engineering certainty, that the overfilled
12 9-ounce canister was a approximate cause of
13 the rupture of the canister itself?

14 MS. HOUCK: Objection to the extent
15 it calls for a legal conclusion.

16 A. The cause of the failure of the canister is
17 the defective PRD. Had the PRD had not been
18 defective, this would have never happened.

19 In addition -- so essentially what happened
20 here is that there was a combination of both
21 overfilled as well as defective PRD, and that
22 caused the event.

23 If the canister had been overfilled as it
24 was with a properly working PRD, this would have
25 never happened. And conversely, if the canister



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1 had not been overfilled and the PRD was as it
2 was defective, this also would not have happened.
3 So it required both to be in place.

4 Q. Let me make sure I understand your answer.

5 Assuming the PRD is, in your opinion,
6 defective, if whomever filled the 9-ounce tank
7 had not overfilled it, you agree there would not
8 have been a ruptured event; is that correct?

9 A. Yes.

10 Q. I assume it's your opinion that the rupture
11 event is what caused Mr. Bates' death?

12 A. The rupture of the canister, yes. Let me be
13 clear on that.

14 That's what the record indicates. I've not
15 tried to independently determine either anything
16 associated with the medical record or anything
17 that would suggest in dispute the fact that the
18 canister ruptured. Those are the facts in the
19 case. I accept those as they are.

20 Q. As you sit here today, it's fair to say that if
21 this 9-ounce canister had not been overfilled,
22 Mr. Bates would not have died in the manner he
23 did; is that correct?

24 MS. HOUCK: Objection to form.

25 A. I believe that if the -- let me be quantitative



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1 just to answer your question clearly.

2 If 9 ounces of CO2 was placed into this
3 canister, then the pressure would not have
4 exceeded, let's say, for sure 2,000 PSI. I mean
5 I would say I think it was probably below that.
6 At those pressures, the cylinder would not have
7 failed.

8 Q. How many canisters do you understand that
9 Mr. Bates filled the evening of February 1?

10 A. I don't know.

11 Q. Do you know the size, 9-ounce, 12-ounce of any
12 of the canisters that Mr. Bates filled the
13 evening of February 1, 2015?

14 A. I don't specifically know. All I know is what's
15 in the testimony. I believe Zen Bates testified
16 that Neman liked to use the 20-ounce canisters.

17 Q. You have not seen the burst disk assembly from
18 the 12-ounce canister, have you?

19 A. That's correct.

20 Q. The 9-ounce canister that we're talking about do
21 you know how many times it was filled prior to
22 this rupture event?

23 A. I don't.

24 Q. Do you know if it was more than the once?

25 A. I don't have any information on that. The only



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1 4:55 p.m. This is the end of media
2 unit no. 3. We're off the record.

3
4 (Changing the videotape at this time.)

5
6 MR. KUYKENDAL: On the record.

7 THE VIDEOGRAPHER: The time is
8 5:06 p.m. This is the beginning of
9 media unit no. 4 in the deposition
10 of Harri Kytomaa. We are on the record.

11 BY MR. KUYKENDAL:

12 Q. Dr. Kytomaa, in your opinion how much was the
13 9-ounce canister overfilled, by how much was it
14 overfilled?

15 A. I don't know exactly.

16 Q. Referring to you the chart on page 10 of your
17 report, the chart at the bottom, figure four,
18 page 10, figure four, would that not -- 1) you
19 stopped at 4,000 as opposed to the 4700 hundred
20 that you opined in your report. Why is that?

21 A. No particular reason.

22 Q. Assuming that the lines continue in the
23 direction that it's going to get to 4700,
24 would that help you answer how many ounces this
25 canister was filled at assuming at the time of



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1 the rupture it was in Mr. Bates' house being
2 handled by him?

3 A. You're asking me for how much it was overfilled?

4 Q. Yes. Or how many ounces were in the tank or
5 however you'd like to answer it.

6 A. We'll never know exactly. But I'd say probably
7 between eleven and thirteen, something like that
8 ounces.

9 MR. FRIEDMAN: Did you say at body
10 temperature?

11 THE WITNESS: I didn't say body
12 temperature.

13 Q. It was overfilled by more than 33 percent or
14 around 33 percent or more?

15 A. I don't know. I don't think what you're saying
16 is consistent with what I said a moment of ago.
17 I gave you a range of 11 to 13 ounces. Eleven
18 would be 2 ounces over nine. You can do the
19 percentages there. It's 22 percent I think.

20 And thirteen would be more. It would be
21 4 ounces over nine. Those are the numbers that
22 I just spoke to. But I don't know. I think one
23 of the variables here is exactly what the
24 temperature of the bottle was. What exactly
25 Mr. Neman was doing with the bottle? I don't



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